

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 5, 2009 has been entered.

2. Claims 2 and 11 are pending. Claims 1, 3-10 and 12 are cancelled. Claim 11 is currently amended.

3. **Claims 2 and 11 stand rejected under 35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 is indefinite in the recital of "selected fromand/or" in lines 3-4. The phrase "selected from" should be followed by "and" and not "or". See MPEP 2173.05(h)(I). It is suggested that "and/or" in line 4 be replaced with "and". In addition, the shaped applicator (a device) is added as a component with the B composition. Shouldn't this component be labeled as a "C" component, instead of "iv"?

Claims 2, being dependent upon claim 11, is rejected as well.

4. The rejection of claims 2-4 and 11 under 35 U.S.C. 103(a) as being unpatentable over Petri et al. (US Patent No. 6,114,298) is withdrawn in view of Applicants' amendment.

5. The rejection of claims 2-4 and 11 under 35 U.S.C. 103(a) as being unpatentable over Petri et al. (US Patent No. 6,114,298) in view of Pritchett et al. (US Patent No. 6,612,468) is withdrawn in view of Applicants' amendment.

6. The rejection of claims 2-4 and 11 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 8 and 9 of U.S. Patent No. **7,402,554** in view of Petri is withdrawn in view of Applicants' amendment. However, please see new ground of double-patenting rejection below.

7. The rejection of claims 2-4 and 11 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5, 6, 11 and 12 of copending Application No. **10/787,266** , **or** claims 1, 5, 6, 11 and 12 of copending Application No. **10/787,343** in view of Petri is withdrawn in view of Applicants' amendment. However, please see new ground of double-patenting rejection below.

Claim Rejections - 35 USC § 103

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petri et al. (US Patent No. 6,114,298), hereinafter "Petri" in view of Kalbow (US Patent No. 4,055,029).

Petri teaches a microemulsion suitable for disinfecting a surface (see col. 2, lines 48-49), such as dishes (see col. 14, line 59), comprising a surfactant, an aqueous phase comprising a bleach, and droplets dispersed in said aqueous phase, said droplets comprising an essential oil or an active thereof (see abstract; col. 2, lines 48-53). The aqueous phase of the microemulsions comprises at least water (see col. 8, lines 58-63) and may comprise as a preferred optional ingredient, a hydroxylated solvent (see col. 9, lines 51-53), such as glycol ethers (see col. 10, lines 1-25) and aliphatic alcohols such as ethanol (see col. 10, lines 45-53). The microemulsions may comprise as an optional ingredient, other solvents including terpene (see col. 11, lines 1-13), which terpene read on the "low water-soluble oil having a solubility in water of less than about 5000 ppm as required in independent claim 11. The microemulsion may further comprise a variety of other optional ingredients such as enzymes (see col. 11, lines 19-24). The microemulsions may be packaged in a variety of suitable detergent packaging known to those skilled in the art, for example, spray dispenser, preferably in a trigger spray dispenser or in a pump spray dispenser, and may include

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manually operated foam trigger-type dispensers (see col. 16, lines 23-44). The microemulsion may also be executed in the form of wipes (see col. 16, lines 60-64). Petri, however, fails to specifically disclose a foam trigger-type dispenser comprising a microemulsion which comprises a surfactant, water, ethanol, glycol ether, terpene and enzymes; the foam to weight ratio as those recited, and a shaped applicator comprising a receiving area.

Kalbow teaches a cleaning, scrubbing or polishing pad (see abstract) which comprises a plurality of boss-like protuberances with sharp contour or peripheral edges distributed over the working surface of the pad, which protuberances, as a result of the deformation occurring in use of the pliable and flexible foam plastic element and the oblique position of the bosses which is a result thereof, develop a particularly pronounced and effective scouring or rubbing action on the surface to be treated. As a result of this improved action, considerably better cleaning or scouring action is accomplished (see col. 1, lines 55-65). The boss-like protuberances can be readily formed from the open-cell foam material of the foam plastic pad and can be formed by means of a hot mould die, which melts the plastic to form depressions (read on "receiving area") or grooves situated between the bosses (see col. 2, lines 5-12).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare a microemulsion, packaged in a foam trigger-type dispenser, comprising optimum proportions of a surfactant, water, ethanol, glycol ether, terpene and enzymes because Petri teaches the combination of these ingredients for effectively disinfecting surfaces such as dishes, and to reasonably expect the foam

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trigger-type dispenser to generate a foam having a foam to weight ratio as those recited because similar ingredients and similar foam-generating dispensers have been utilized. It would also have been obvious to one of ordinary skill in the art at the time the invention was made to have packaged the cleaning pad having depressions and protuberances of Kalbow with the foam trigger-type dispenser of Petri because in col. 16, lines 23-44 Petri suggests that the microemulsions may be packaged in a variety of suitable detergent packaging known to those skilled in the art, hence, packaging the dispenser and cleaning pad would provide convenience in cleaning, and the cleaning pad would provide better cleaning and scouring as taught by Kalbow.

10. Claims 2 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petri et al. (US Patent No. 6,114,298), hereinafter "Petri" in view of Pritchett et al. (US Patent No. 6,612,468), hereinafter "Pritchett", in view of Kalbow.

Petri teaches the features as described above. Petri, however, fails to specifically disclose a foam generating dispenser comprising a gas imparting mechanism selected from an air injection piston, foam-generating aperture, a mesh or net, a pump and sprayer, the foam to weight ratio as those recited, and a shaped applicator comprising a receiving area.

Pritchett teaches a hand operated non-aerosol foam dispenser comprising a combined liquid pump and air pump for mounting at the top of a container of foamable liquid, the liquid pump having a liquid cylinder and a liquid piston defining between them a liquid chamber, the air pump having an air cylinder and an air piston defining between

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them an air chamber, and the liquid piston and air piston being reciprocable together in their respective cylinders by the action of a pump plunger which carries said pistons; an air inlet valve and liquid inlet valve being provided for the air chamber and liquid chamber respectively; an air discharge passage and a liquid discharge passage leading from the air chamber and the liquid chamber respectively, the air discharge passage and liquid discharge passage meeting one another for mixing the pumped air and liquid which passes to an outlet passage of the dispenser by way of a permeable foam regulation element; one or more vent openings being provided to admit air into a cap chamber and into the air chamber through the air inlet valve (see abstract; claims). The preferred foam-generating element uses one or more layers of mesh to produce a uniform foam for discharge (see col. 3, lines 40-46).

Kalbow teaches the features as described above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to package the microemulsion of Petri in the non-aerosol foam dispenser of Pritchett because Petri teaches in col. 6, lines 23-44 that the microemulsions may be packaged in a variety of suitable detergent packaging known to those skilled in the art, and Pritchett teaches such dispenser, and to reasonably expect the foam to weight ratio to be within those recited because similar ingredients and dispensers have been utilized. It would also have been obvious to one of ordinary skill in the art at the time the invention was made to have packaged the cleaning pad having depressions and protuberances of Kalbow with the dispenser of Petri and Pritchett because in col. 16, lines 23-44 Petri suggests that the microemulsions may be

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packaged in a variety of suitable detergent packaging known to those skilled in the art, hence, packaging the dispenser and cleaning pad would provide convenience in cleaning, and the cleaning pad would provide better cleaning and scouring as taught by Kalbow.

Double Patenting

11. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

12. Claims 2 and 11 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 8 and 9 of U.S. Patent No.

7,402,554 in view of Petri and Kalbow.

US '554 teaches a similar cleaning kit except for the presence of ethanol, glycol ethers and low-water soluble oil, and a shaped applicator with a receiving area.

Each of Petri and Kalbow teaches the features as described above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate ethanol, glycol ethers and low water soluble oil like terpene into the composition of US '554 because such incorporation would assist/promote the formation of the microemulsion, and contribute to the cleaning performance as taught by Petri in col. 9, lines 54-55 and col. 11, lines 11-13, and to have packaged the kit with a cleaning pad because this would provide better cleaning and scouring as taught by Kalbow.

13. Claims 2 and 11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5, 6, 11 and 12 of copending Application No. **10/787,266** , **or** claims 1, 5, 6, 11 and 12 of copending Application No. **10/787,343** in view of Petri and Kalbow.

Each of the copending applications above teaches a similar cleaning kit except for the presence of ethanol, glycol ethers and low-water soluble oil, and a shaped applicator with a receiving area.

Each of Petri and Kalbow teaches the features as described above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate ethanol, glycol ethers and low water soluble oil like terpene into the composition of each of the above copending applications because such incorporation would assist/promote the formation of the microemulsion, and contribute to the cleaning performance as taught by Petri in col. 9, lines 54-55 and col. 11, lines

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11-13, and to have packaged the kit with a cleaning pad because this would provide better cleaning and scouring as taught by Kalbow.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

14. Applicants' arguments with respect to claims 2 and 11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Lorna M Douyon/
Primary Examiner, Art Unit 1796